

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

[REDACTED]

Stephen D. Pizzuti
(CRD No. 1461660),

[REDACTED]

[REDACTED]

John W. DuBrule
(CRD No. 1223724),

and

Kevin A. Tuttle
(CRD No. 2414158),

Respondents.

DISCIPLINARY PROCEEDING
No. 2011027666902

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From January 2008 through January 2013, [REDACTED]
(" [REDACTED]" or the "Firm") failed to detect and prevent widespread misconduct by its staff,
registered representatives, supervisors, and the Firm's principals. The Firm and its

representatives and principals engaged in securities fraud, distributed materially misleading sales information to the public, unlawfully sold unregistered securities, provided false information to FINRA, unlawfully conducted a securities business while the Firm's registration was suspended, failed to develop and implement an adequate anti-money laundering system, and failed to develop and implement a supervisory system that should have detected and prevented this extensive misconduct.

2. From about June 2007 through January 2010, Respondents John DuBrule ("DuBrule") and Kevin Tuttle ("Tuttle"), both registered representatives at [REDACTED], engaged in securities fraud by knowingly inflating valuations of illiquid investments owned by hedge funds entitled the Dellinger Fund, LLC and the TAM Dynamic Allocation Fund, LLC. After obtaining permission from [REDACTED] to manage these hedge funds as an outside business activity, DuBrule and Tuttle sent investors of the Dellinger Fund quarterly reports with inflated account values. These fictitious values were based on illusory unrealized gains from promissory notes and other agreements that had little, if any, value. Notwithstanding the fact that the promissory notes were in default or cancelled, DuBrule and Tuttle willfully valued them at their face value with purportedly accrued interest. The account values for the customers' quarterly account statements were falsely inflated by 52% to 930%. Moreover, DuBrule and Tuttle materially misrepresented or omitted facts related to the value of two customers' investments in the Dellinger Fund to entice them to invest an additional \$3.8 million into the fund during February 2009. As a result, DuBrule and Tuttle willfully violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, NASD Rules 2210(d), 2120 and 2110, and FINRA Rules 2020 and 2010 (First Cause of Action).

3. During 2008 and 2009, DuBrule and Tuttle also used inflated assessments of the Dellinger Fund's account value to calculate management fees that they withdrew from the Dellinger and TAM Funds. By calculating these management fees based on inflated valuations, including the value of promissory notes that were in default, and interests in companies that had no market value, DuBrule and Tuttle misappropriated over \$141,000 of investors' funds. As a result, DuBrule and Tuttle violated NASD Rule 2110 and FINRA Rule 2010 (Second Cause of Action).

4. Further, in response to four requests for documents FINRA issued pursuant to FINRA Rule 8210, [REDACTED] and [REDACTED] ("[REDACTED]"), the Firm's Chief Compliance Officer, knowingly provided forged documents to FINRA that falsely reflected that dozens of penny stock transactions had been reviewed by the Firm's supervisory and compliance personnel, when in fact no supervision occurred. Despite that [REDACTED] knew that the documents were forged, he failed to notify FINRA of this fact when providing the documents. Accordingly, [REDACTED] and [REDACTED] violated FINRA Rules 8210 and 2010 (Third Cause of Action).

5. One of these forms, dated August 4, 2010, authorized the deposit of 56,500,000 unregistered shares of penny stocks. From October 1, 2010 through October 8, 2010, DuBrule caused the Firm to sell these shares when no registration or exemption from registration applied to the shares. In so doing, DuBrule and the Firm violated FINRA Rule 2010 by causing the sale of unregistered securities in contravention of Section 5 of the Securities Act of 1933. The 56,500,000 shares of penny stock were processed by an unlicensed [REDACTED] employee, and thus were not reviewed by any [REDACTED] supervisory or compliance personnel (Fourth Cause of Action).

6. From September 2010 to February 2012, ██████ registered representative Stephen Pizzuti ("Pizzuti"), operated websites that disseminated securities-related communications to the public that contained material omissions and/or materially misleading information in violation of NASD Rule 2210(d) and FINRA Rule 2010 (Fifth Cause of Action).

7. Moreover, from May 2009 through January 2013, ██████, ██████ ("██████"), the Firm's Anti-Money Laundering Compliance Officer, and ██████, Chief Compliance Officer, failed to establish and maintain supervisory procedures reasonably designed to achieve compliance with Anti-Money Laundering (AML) rules and regulations, and failed to monitor and detect suspicious activity in violation of NASD Rule 3011 and FINRA Rules 2010 and 3310 (effective 1/1/10) (Sixth Cause of Action).

8. In addition, from November 2007 to January 2013, ██████, Pizzuti, ██████, ██████, and Dubrule failed to establish, maintain, and enforce an adequate supervision system in violation of NASD Rule 3010 and FINRA Rule 2010 (Seventh Cause of Action). Particularly, the respondents listed below failed to supervise the following activities:

- a. ██████ and ██████ failed to reasonably supervise Dubrule and Tuttle's activities related to the Dellinger and TAM Funds.
- b. ██████, Pizzuti, ██████, ██████, and Dubrule failed to reasonably supervise ██████ registered representatives and support staff activities in connection with the deposit and liquidation of penny stocks.

- c. [REDACTED], [REDACTED], and [REDACTED] failed to reasonably supervise Merrimac registered representatives' outside business activity and public communications made through internet websites.
- d. [REDACTED] failed to reasonably supervise business activity involving foreign finders.

9. Moreover, from September 2, 2009 to September 17, 2009, [REDACTED] effected 754 securities transactions while its registration with FINRA was suspended for failing to pay membership fees, in violation of Article IV, Section 1 of FINRA By-Laws and FINRA Rule 2010 (Eighth Cause of Action).

RESPONDENTS AND JURISDICTION

10. Respondent [REDACTED] is a FINRA registered broker-dealer with its principal place of business in Altamont Springs, Florida. [REDACTED] became registered with both FINRA and the United States Securities and Exchange Commission ("SEC") in 1993, which registrations remain in effect. [REDACTED] operates one registered branch, 14 non-registered office locations, and 54 registered representatives.

11. Respondent Stephen Pizzuti became registered with a FINRA member firm as a General Securities Representative in April 1986. Pizzuti became associated with [REDACTED] in November of 2002, and became the Firm's Chief Executive Officer in December 2007, which position he has held through the date of this Complaint. At all times relevant to this Complaint, Pizzuti was the managing principal of the Firm.

12. Respondent [REDACTED] became registered with a FINRA member firm as a General Securities Representative in April 1992. On March 6, 2003, [REDACTED] became

associated with [REDACTED] as the Firm's Chief Compliance Officer and as a registered General Securities Principal. He was the Firm's Chief Compliance Officer until April 2008. [REDACTED] was the President of the Firm from 2004 until January 2013. Since January 2013, [REDACTED] has been the Firm's president emeritus.

13. Respondent [REDACTED] became registered with [REDACTED] as a General Securities Representative and General Securities Principal in April 2008. [REDACTED] also became the Firm's Chief Compliance Officer in April 2008, which position he has held through the date of this Complaint.

14. Respondent John DuBrule became registered with a FINRA member firm as a General Securities Representative in 1984. DuBrule became registered with [REDACTED] as a General Securities Representative, General Securities Principal, and Options Principal on or about September 9, 2008, which positions he has held through the date of this Complaint.

15. Respondent Kevin Tuttle ("Tuttle") became registered with a FINRA member firm as a General Securities Representative in 1994. Tuttle became registered with [REDACTED] as a General Securities Representative and a General Securities Principal in September 2007. Tuttle's registration with [REDACTED] was terminated on July 6, 2011. Although Tuttle is no longer registered or associated with a FINRA firm, he remains subject to FINRA's jurisdiction pursuant to Article V of FINRA's By-Laws, because this Complaint was filed within two years after the effective date of termination of Tuttle's registration with [REDACTED], namely, July 6, 2011, and the Complaint charges Tuttle with misconduct committed while he was registered or associated with a FINRA member.

FIRST CAUSE OF ACTION

**FRAUD AND WILLFULLY MAKING AND CAUSING TO BE MADE FALSE AND MISLEADING
STATEMENTS IN CONNECTION WITH THE SALE OF SECURITIES
VIOLATIONS OF SECURITIES EXCHANGE ACT OF 1934 SECTION 10(B),
RULE 10B-5 THEREUNDER,
NASD RULES 2120, 2210 AND 2110 AND FINRA RULES 2020 AND 2010
(DUBRULE AND TUTTLE)**

16. The Department realleges and incorporates by reference paragraphs 1-15 above.
17. Section 10(b) of the Exchange Act and Rule 10b-5 thereunder make it unlawful for any person, by the use of any means or instrumentality of interstate commerce, or of the mails, to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in connection with the purchase or sale of a security.
18. NASD Rule 2120, which was renumbered FINRA Rule 2020 as of December 15, 2008, likewise provides that: "No member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance."
19. NASD Rule 2211(a)(1)(A) defines "correspondence" as any written letter or electronic mail message distributed by a member to one or more existing retail customers.
20. NASD Rule 2210(d)(1)(A) provides that all member communications with the public must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service, and that no member may omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communication to be misleading.

21. NASD Rule 2210(d)(1)(B) provides that: "No member may make any false, exaggerated, unwarranted or misleading statement or claim in any communication with the public."

22. NASD Rule 2110, which was renumbered FINRA Rule 2010 as of December 15, 2008, requires members and associated persons, in the conduct of their business, to "observe high standards of commercial honor and just and equitable principles of trade."

**DuBrule and Tuttle Establish and Operate
The Dellinger Fund and The TAM Fund**

23. The Dellinger Fund, LLC ("Dellinger Fund") was a private investment fund that was sold as an unregistered private offering exempt from registration under Rule 506 of Regulation D of the Securities Act of 1933 ("Regulation D"). According to the Dellinger Fund's Offering Memorandum, its investment strategy was to use hedging and arbitrage techniques in equity and fixed income markets and invest in real estate and other alternative investments.

24. Starting on or about August 1, 2004, DuBrule and Tuttle began offering interests of the Dellinger Fund to members of the public. Tuttle Asset Management, LLC ("TAM") was the investment manager for the Dellinger Fund. Tuttle owned 53% and DuBrule owned 38% of TAM, with the remaining amount owned by two other individuals.

25. According to the Dellinger Fund's Offering Memorandum, TAM was entitled to receive a management fee no greater than two percent per annum from each investor's capital accounts, on a quarterly basis.

26. In addition, the Offering Memorandum represented that the Dellinger Fund would engage an accounting firm to serve as an independent auditor for the fund. However, the

Dellinger Fund was never audited by an independent accounting firm. The investors in the Dellinger fund were not informed that an audit had never been performed.

27. From September 2004 to November 2004, DuBrule and Tuttle raised approximately \$18.9 million from 22 investors for the Dellinger Fund. Although DuBrule and Tuttle co-managed the Dellinger Fund, Tuttle was primarily involved in trading equities for the Fund, while DuBrule was primarily involved in managing the Dellinger Fund's alternative asset portfolio. DuBrule and Tuttle were responsible for valuing the assets in the fund.

28. In or about January 2007 DuBrule and Tuttle also began offering interests in the TAM Dynamic Allocation Fund, LLC (the "TAM Fund"). The TAM Fund was also sold as an unregistered private offering, which was exempt from registration under Rule 506 of Regulation D. The TAM Fund was created to allow more funds to be invested in the Dellinger Fund, which had closed to new investors in December 2005. Like the Dellinger Fund, the TAM Fund's investment strategy was to use hedging and arbitrage techniques in equity and fixed income markets and invest in real estate and other alternative investments. TAM also acted as the manager for the TAM Fund. On or about January 5, 2007, the Dellinger Fund invested \$1,500,000 into the TAM Fund and was the largest investor in the TAM Fund.

DuBrule Invests in Illiquid Securities Related to the Boston Medical Group

29. Starting on or about April 8, 2006, DuBrule, on behalf of the Dellinger Fund and TAM Fund, began entering into agreements with several entities controlled by or affiliated with an individual named SM. DuBrule contributed money from each of the funds to SM-controlled entities in order to indirectly invest in a business called the Boston Medical Group, which purported to operate medical clinics throughout the world.

30. On or about April 8, 2006, DuBrule, on behalf of the Dellinger Fund, entered into an agreement entitled "Purchase and Operating Agreement for Reim License Ventures, LLC" ("Reim Purchase Agreement"). Reim License Ventures, LLC ("Reim"), was a Florida Limited Liability Company that owned a Regional Territory License Agreement, Near East ("Near East Contract"). DuBrule entered into the Reim Purchase Agreement to indirectly invest in the Boston Medical Group's operations in foreign countries in the Middle East. Pursuant to the Reim Purchase Agreement, DuBrule, wired \$3,250,000 from the Dellinger Fund to Reim for the purchase of a 45% ownership stake in Reim. The Reim Purchase Agreement required Reim to buy back Dellinger Fund's ownership interest for \$4,000,000, if Reim was able to sell the Near East Contract to an outside third party within 90 days.

31. On or about June 12, 2006, Reim paid \$1,000,000 to the Dellinger Fund. Reim was purported to have paid the remaining \$3,000,000 due under the Reim Purchase Agreement to Interim Acquisitions, LLC ("Interim"), a Florida Limited Liability Company. In turn, Interim provided the Dellinger Fund a promissory note dated June 12, 2006 ("June 2006 Promissory Note"), under which Interim agreed to pay the Dellinger Fund \$3,000,000 plus 20% interest on or before June 12, 2007. However, Interim failed to pay any funds to the Dellinger Fund by June 12, 2007, and thereafter, the June 2006 Promissory Note was in default.

32. On or about January 5, 2007, DuBrule paid \$1,500,000 from the TAM Fund to Interim, for a promissory note dated January 5, 2007 ("January 2007 Promissory Note"). Pursuant to the January 2007 Promissory Note, Interim agreed to pay the TAM Fund \$1,500,000 plus 20% interest on or before January 5, 2008. Yet Interim failed to pay any funds to the TAM Fund by January 8, 2008, and, thereafter, the January 2007 Promissory Note was in default.

33. On or about April 11, 2007, DuBrule paid \$300,000 from the Dellinger Fund to Interim, for a promissory note dated April 11, 2007 (“April 2007 Promissory Note”). Pursuant to the April 2007 Promissory Note, Interim agreed to pay the Dellinger Fund \$300,000 plus 20% interest on or before April 11, 2008. However, Interim failed to pay any funds to the Dellinger Fund by April 11, 2008, and, thereafter, the April 2007 Promissory Note was in default.

34. On or about November 6, 2007, DuBrule paid \$1,000,000 from the TAM Fund to Interim, for a promissory note dated November 6, 2007 (“November 2007 Promissory Note”). Pursuant to the November 2007 Promissory Note, Interim agreed to pay the TAM Fund \$1,000,000 plus 10% interest on or before November 6, 2008. But the funds were not repaid and the November 2007 Promissory Note was cancelled on or about July 21, 2008.

35. On or about January 8, 2008, DuBrule paid \$2,000,000 from the TAM Fund to BMG II Holdings, LLC (“BMG II”), for a promissory note dated January 8, 2008 (“January 2008 Promissory Note”). Pursuant to the January 2008 Promissory Note, BMG II agreed to pay the TAM Fund \$2,000,000 plus up to 20% interest on or before January 8, 2009. However, the funds were not repaid, and the January 2008 Promissory Note was cancelled on or about July 21, 2008.

36. On or about July 21, 2008, DuBrule entered into an agreement entitled “Consolidation of All Agreements” (the “First Consolidation Agreement”) between TAM, the Dellinger Fund, their subsidiaries and affiliates, and DuBrule (collectively the “DuBrule Group”) and Eastern Trading Corporation, Ltd., Interim, BMG II, Reim and their subsidiaries and affiliates (collectively the “Reim Group”). Pursuant to the First Consolidation Agreement, all promissory notes that members of the DuBrule Group held with members of the Reim Group were terminated. In exchange for terminating the promissory notes, the Reim Group assigned to

the DuBrule Group a portion of an interest in a license agreement owned by the Eastern Trading Corporation, Ltd. (“Eastern Trading”). Eastern Trading was not publicly traded, and DuBrule made no independent valuation of Eastern Trading or its interest in the license agreement before entering into the First Consolidation Agreement.

37. On or about December 7, 2009, DuBrule entered into an agreement entitled “Consolidation of All Agreements II” (the “Second Consolidation Agreement”). The Second Consolidation Agreement superseded the First Consolidation Agreement. The parties to the Second Consolidation Agreement were identical to the parties to the First Consolidation Agreement, except that four entities in the Reim Group had “dissolved” after the First Consolidation Agreement and before the Second Consolidation Agreement. Pursuant to the Second Consolidation Agreement, the Reim Group assigned from Eastern Trading to the DuBrule Group, a 12% ownership in Worldwide Medassets, LLC’s membership interest in a newly formed entity called Medical Holdings and Investment Partners, LLC. Neither Worldwide Medassets, LLC, nor Medical Holdings and Investment Partners, LLC, was publically traded. DuBrule made no independent valuation was of Worldwide Medassets, LLC, or its membership interest in Medical Holdings and Investment Partners, LLC.

38. As of March 6, 2012, the primary assets that remained in the Dellinger Fund or TAM Fund that related to DuBrule’s indirect investments in the Boston Medical Group, were approximately 5.8 million shares of Emerging Media Holdings, Inc. On July 11, 2012, Emerging Media Holdings Network, Inc. became known as Lifestyle Medical Network, Inc. (“Lifestyle Medical”). According to public filings dated August 14, 2012, Lifestyle Medical generated no historical revenues, and incurred historical operating losses of \$759,764. As of June 30, 2012, Lifestyle Medical had \$20,401 cash on hand, and acknowledged that it expected

to incur operating losses in the future and could offer no assurances that it would operate profitably in the future.

**████████ Permitted DuBrule and Tuttle to Sell Securities Through the
Dellinger Fund and TAM Fund as Approved Outside Business Activities**

39. Tuttle became associated with ██████ as a registered representative in September 2007. DuBrule sought to become registered with ██████ in or around September 2007, but was not registered with the Firm until September 2008. On September 14, 2007, Tuttle and DuBrule formally requested permission from ██████ to engage in several outside business activities, including managing the Dellinger Fund and TAM Fund. On November 15, 2007, the Firm, through ██████, granted Tuttle permission to engage in his outside business activities and with respect to the Dellinger Fund and TAM Fund to transact a securities business in accordance with NASD Rule 3040. The Firm prohibited Tuttle from marketing participation from any ██████ client in any outside hedge funds, including the Dellinger Fund and TAM Fund.

40. DuBrule became officially associated with ██████ in September 2008. On September 9, 2008, DuBrule re-requested permission from ██████ to engage in outside business activities, including managing the Dellinger Fund and TAM Fund. The Firm, through ██████, granted DuBrule permission to engage in these outside business activities, and to transact securities business in accordance with NASD Rule 3040. The Firm required that DuBrule advise the Firm of any change in his outside business activities.

**DuBrule and Tuttle Misrepresent the Value
Of Customers' Interests in the Dellinger Fund**

41. From in or about September 2007 to in or about January 2010, DuBrule and Tuttle assigned values to assets of the Dellinger Fund, which were reflected in quarterly account

statements (“Quarterly Statements”). The Quarterly Statements purported to show the total value of the assets owned by the Dellinger Fund, along with any realized and unrealized gains or losses.

42. Each investor received, through the United States Postal Service, a two-page summary of the Quarterly Statements (“Summary Quarterly Statements”), which purported to show the current value of a customer’s investment in the Dellinger Fund, based on valuations supplied by DuBrule and Tuttle. The Summary Quarterly Statements contained only generalized descriptions of the investor’s account balance and activity, and did not include a description of the assets owned by the Dellinger Fund, or the realized and unrealized gains or losses attributable to the individual assets owned by the fund.

43. All of the Summary Quarterly Statements contain the statement that the Dellinger Fund “utilizes the services of an independent firm to provide monthly statements and annual tax reports to its members.” The documents also contained a statement that the “reports are prepared in accordance with Generally Accepted Accounting Principles reasonably applied, and contain all information, including accruals, necessary for a fair, accurate and objective presentation of the financial condition of the Fund.” In fact, the valuations contained in the Quarterly Statements and the Summary Quarterly Statements were not provided by an independent company, and were not prepared in accordance with Generally Accepted Accounting Principles.

44. From in or about September 2007 to in or about July 2008, DuBrule and Tuttle knowingly inflated the value of the Dellinger Fund’s assets on its Quarterly Statements by, among other things, including the face value and promised interest of defaulted promissory notes as assets of Dellinger Fund. From September 2007 through June 2008, the Quarterly Statements

falsely inflated the value of investors' interests in the Dellinger Fund by 52% to 211%, as shown on Schedule A, attached hereto and incorporated by reference.

45. In addition, from in or about September 2008 to in or about January 2010, DuBrule and Tuttle knowingly inflated the value of the Dellinger Fund's assets on its Quarterly Statements by, among other things, including the face value and promised interest of defaulted promissory notes as assets of the Dellinger Fund, when on or about July 21, 2008, the promissory notes were terminated pursuant to the First Consolidation Agreement and the Second Consolidation Agreement. From September 2008 through January 2010, the Summary Quarterly Reports falsely inflated the value of investors' interests in the Dellinger Fund by 212% to 930%, as shown on Schedule A.

**DuBrule and Tuttle Make Material Misrepresentations
And Material Omissions of Facts to Solicit Additional Investments**

46. In or about January 2009, DuBrule and Tuttle sent Summary Quarterly Statements to GDT and DFP, which showed that as of December 31, 2008, the value of their investment in the Dellinger Fund was \$4,787,341, and \$1,850,681, respectively. Moreover, the Summary Quarterly Statements showed that GDT and DFP made profits from their initial investments of \$917,024 and \$335,868, respectively. In fact, the total value of all investors' interests in the Dellinger Fund on December 31, 2008 was approximately \$1,248,051. Further, the actual values of GDT's and DFP's interests with the Dellinger Fund as of December 31, 2008 were approximately \$563,994 and approximately \$218,034, respectively. Contrary to the asset values contained in the Summary Quarterly Statements, GDT and DFP had suffered losses of approximately \$3,306,322 and approximately \$1,296,778, respectively.

47. In February 2009, Tuttle and DuBrule solicited GDT and DFP to invest an additional \$1,850,000 and \$2,000,000, respectively, in the Dellinger Fund. Tuttle and DuBrule made materially false and misleading statements and omissions to GDT and DFP to entice them to deposit the additional funds. By sending the Summary Quarterly Statements to GDT and DFP, DuBrule and Tuttle falsely represented that their investments in the Dellinger Fund had increased in value. DuBrule and Tuttle also failed to disclose that the valuation of the Dellinger Fund was based on defaulted promissory notes and promissory notes that had been cancelled by the First Consolidation Agreement.

**DuBrule Made Excessive Withdrawals When He Knew
There were Substantial Losses in the Value of the Dellinger Fund**

48. From September 2004 through January 2005, DuBrule and his wife invested a total of \$88,554 in the Dellinger Fund.

49. From on or about March 1, 2009, to on or about November 1, 2009, DuBrule withdrew a total of \$92,405 from the Dellinger Fund relying on the inflated value of DuBrule and his wife's investments in the Dellinger Fund. DuBrule misappropriated investor funds by withdrawing the funds despite knowing that the Promissory Notes had been cancelled and the value of the Dellinger Fund's assets had decreased substantially since January 2005.

50. From in or about July 2007 to in or about January 2010, DuBrule and Tuttle mailed approximately ten Summary Quarterly Statements for the Dellinger Fund to the fund's investors. The amounts listed as the current value of the fund were materially false and misleading because those values included defaulted promissory notes and agreements that had little or no value. DuBrule and Tuttle knew, or were reckless in not knowing, that the Summary Quarterly Statements contained materially false and misleading statements, in that the values of

the investors' capital accounts were inflated by between 52% and 930%. DuBrule and Tuttle failed to inform investors that valuations on the Summary Quarterly Statements contained promissory notes that were in default or were cancelled. These omissions were material because they concerned the true and accurate value of assets in the Dellinger Fund.

51. In addition, as noted above, the Summary Quarterly Statements contained false and misleading statements that claimed the fund utilized the services of an independent firm to prepare statements and tax reports, and that the statements and tax reports were prepared in accordance with GAAP.

52. Fund investors GDT and DFP deposited \$3.8 million into the Dellinger Fund, based, in part on the fraudulent misrepresentations and omissions in the Summary Quarterly Statements.

53. By virtue of the foregoing, DuBrule and Tuttle knowingly or recklessly caused the distribution of the Summary Quarterly Statements that contained false information about the valuation of the Dellinger Fund, in willful violation of §10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder, NASD Rule 2210, and NASD Rules 2120 and 2110 for conduct occurring before December 15, 2008, and FINRA Rules 2020 and 2010 for conduct occurring after December 14, 2008.

SECOND CAUSE OF ACTION

MISAPPROPRIATION OF INVESTOR FUNDS VIOLATION OF NASD RULE 2110 AND FINRA RULE 2010 (DuBRULE AND TUTTLE)

54. The Department realleges and incorporates by reference paragraphs 1-53 above.

55. FINRA Rule 2010 and its predecessor NASD Rule 2110 require every member, in the conduct of his or her business, to observe high standards of commercial honor and just and equitable principles of trade with regard to their business practices.

56. Misappropriation is the intentional and unauthorized taking of or exercise of ownership over funds by one who neither owns the funds nor is entitled to possess them.

57. From in or about April 2008 to in or about January 2010, DuBrule and Tuttle withdrew a quarterly management fee from the Dellinger Fund. According to the terms of the Dellinger Fund Private Placement Memorandum, DuBrule and Tuttle were permitted to withdraw .5% per quarter of the equity of the fund for a management fee. DuBrule and Tuttle knew or were reckless in not knowing that they inflated the value of the assets of the Dellinger Fund by including defaulted promissory notes and the First Consolidation Agreement and Second Consolidation Agreement, which had no market value. By using the unsupported and inflated value of the fund to calculate their management fees, DuBrule and Tuttle knew or were reckless in not knowing that they were withdrawing significantly more than the .5% maximum quarterly fee, based upon the true and accurate value of assets in the fund. As a result, DuBrule and Tuttle withdrew \$141,632 of excess fees from the fund, which came directly from what remained of the capital accounts of the fund's investors.

58. On or about September 1, 2004 and January 1, 2005, DuBrule and his wife invested a total of \$88,554 in the Dellinger Fund. From in or about March 2009 to in or about November 2009, DuBrule withdrew \$92,405 from the Dellinger Fund. When DuBrule withdrew these amounts he knew or was reckless in not knowing that the value of the Dellinger Fund had decreased from January 2005 to 2009.

59. By virtue of the foregoing, DuBrule and Tuttle misappropriated investors' funds by withdrawing excessive amounts of management fees and performance allocations from the Dellinger Fund, and DuBrule misused customers' funds by withdrawing excessive amounts as a return on investment, in violation of NASD Rule 2110 for conduct occurring before December 15, 2008, and in violation of FINRA Rule 2010 for conduct occurring after December 14, 2008.

THIRD CAUSE OF ACTION

PROVIDING FALSE DOCUMENTS TO FINRA VIOLATION OF FINRA RULES 8210 AND 2010 (██████████ AND ██████████)

60. The Department realleges and incorporates by reference paragraphs 1-59 above.

61. FINRA Rule 8210 requires a member to provide information orally, in writing, or electronically and to testify under oath when required by FINRA.

62. From October 2007 through February 2013, ██████████ employed an administrative assistant, CS, who provided administrative support to DuBrule. DuBrule, as a Series 24 licensed principal, was CS's direct supervisor.

63. Many of DuBrule's customers actively traded penny stocks. ██████████ required that its registered representatives complete specific forms related to penny stocks prior to a customer depositing penny stocks into his account. These forms, called Deposit Securities Request forms, included a customer questionnaire that intended to document the source of the penny stock and confirm that the stock was either registered with the SEC or exempt from registration, among other things. Once the Deposit Securities Request form was completed by the registered representative, it was then reviewed and signed by a branch manager and the Chief Compliance Officer, and subsequently sent to the Firm's clearing agent to be processed.

64. During 2009 and 2010, CS forged numerous Deposit Securities Request forms. CS did so by photocopying DuBrule's and [REDACTED] authorizing signatures from a legitimately signed Deposit Securities Request form and applying the signatures onto numerous forms that had not been reviewed by DuBrule or any other member of [REDACTED] staff. After the forged signatures had been applied to the unreviewed forms, the deposit transactions were processed through [REDACTED] clearing agent as though the transactions had been reviewed and approved by an appropriate [REDACTED] supervisor and other compliance personnel.

65. In or around September 2010, [REDACTED] staff discovered that CS had forged several Deposit Securities Request forms. [REDACTED] staff members Pizzuti, [REDACTED], and DuBrule met with CS and confirmed that she had forged the Deposit Securities Request forms.

66. On September 23, 2010, FINRA staff issued to [REDACTED] requests for documents pursuant to FINRA Rule 8210. Among the items that FINRA staff requested were copies of documents related to the receipt, delivery and transfer of Issuer A's stock.

67. On September 24, 2010, [REDACTED] provided FINRA staff with, among other items, a Deposit Securities Request Questionnaire concerning a customer deposit of 70,000 shares of Issuer A's stock. The requested Issuer A Deposit Securities Request Questionnaire contained signatures that represented that [REDACTED] personnel had conducted three levels of review prior to processing the transaction. The Issuer A Deposit Securities Request signatures purported to bear signatures of DuBrule as the reviewing representative and reviewing principal, and [REDACTED] as the Chief Compliance Officer. However, the signatures were forged. CS had copied the signatures from a previously signed form, and pasted the signatures onto the form pertaining to Issuer A. [REDACTED] knew when he provided this document to FINRA that the signatures were forged, and failed to notify FINRA of this fact.

68. On January 6, 2011, FINRA staff issued to [REDACTED] requests for documents Pursuant to FINRA Rule 8210. Among the items that FINRA staff requested were copies of documents related to numerous [REDACTED] customer accounts that actively traded in penny stocks. Particularly, FINRA staff requested due diligence files and evidence of registration/valid exemption from registration for certain specified securities.

69. From January 21, 2011 through February 9, 2011, [REDACTED] provided FINRA staff with, among other items, Deposit Securities Request forms pertaining to transactions described in Schedule B.

70. Each of the Deposit Securities Request forms listed in Schedule B that were provided in response to FINRA's request dated January 6, 2011 contained signatures that represented that [REDACTED] personnel had conducted three levels of review prior to processing each transaction, when in fact no such review occurred. The Deposit Securities Request forms described in Schedule B each purported to bear signatures of DuBrule as the reviewing representative and reviewing principal, and [REDACTED] as the Chief Compliance Officer. However, the signatures for each form were forged by CS. [REDACTED] knew when he provided these documents to FINRA that the signatures were forged, and failed to notify FINRA of this fact.

71. On March 23, 2011, FINRA staff issued to [REDACTED] requests for documents Pursuant to FINRA Rule 8210. Among the items that FINRA staff requested were copies of documents related to the deposit of Issuer F's stock.

72. On March 25, 2011, [REDACTED] provided FINRA staff with, among other items, a Deposit Securities Request form concerning a customer deposit of 300,000 shares of Issuer F's stock. The Issuer F Deposit Securities Request form contained signatures that represented that [REDACTED] personnel had conducted three levels of review prior to processing the transaction.

The Issuer F Deposit Securities Request form purported to bear the signatures of DuBrule as the reviewing representative and reviewing principal, and [REDACTED] as the Chief Compliance Officer. However, the signatures were forged by CS. [REDACTED] knew when he provided this document to FINRA that the signatures were forged, and failed to notify FINRA of this fact.

73. On December 20, 2012, FINRA staff issued to [REDACTED] requests for documents Pursuant to FINRA Rule 8210. Among the items that FINRA staff requested were copies of documents related to numerous [REDACTED] customer accounts that actively traded in penny stocks. Particularly, FINRA staff requested documents that the Firm prepared and maintained in connection with processing deposits and liquidations of certain specified securities.

74. On January 15, 2013, [REDACTED] provided FINRA staff with, among other items, Deposit Securities Request forms pertaining to transactions described in Schedule B.

75. Each of the Deposit Securities Request forms listed in Schedule B that were provided in response to FINRA's request dated December 20, 2013 contained signatures that represented that [REDACTED] personnel had conducted three levels of review prior to processing each transaction, when in fact no such review occurred. The Deposit Securities Request forms described in Schedule B each purported to bear signatures of DuBrule as the reviewing representative and reviewing principal, and [REDACTED] as the Chief Compliance Officer. However, the signatures for each form were forged by CS. [REDACTED] knew when he provided these documents to FINRA that the signatures were forged, and failed to notify FINRA of this fact.

76. As a result of the foregoing, [REDACTED] and [REDACTED] violated FINRA Rules 8210 and 2010.

FOURTH CAUSE OF ACTION

**VIOLATION OF FINRA RULE 2010
FOR CAUSING THE SALE OF UNREGISTERED SECURITIES
IN CONTRAVENTION OF SECURITIES ACT OF 1933, SECTION 5
(██████████ AND DuBRULE)**

77. The Department realleges and incorporates by reference paragraphs 1-76 above.
78. Section 5 of the Securities Act of 1933 prohibits the sale of any security through the mails or in interstate commerce, unless a registration statement is in effect as to the security.
79. Between October 1, 2010 and October 8, 2010, ██████████ Customer J sold approximately 56,500,000 shares of Issuer B's stock without registration or an applicable exemption, in approximately 223 transactions. At all times relevant to this Cause of Action, DuBrule was the registered representative assigned to Customer J.
80. Customer J purchased a total of 100,000,000 shares of Issuer B's stock for the sum of \$50,000 from an individual, JT, on July 15, 2010, through a written stock purchase agreement.
81. JT obtained the 100,000,000 shares directly from Issuer B, in a series of transactions:
- a. First, on May 15, 2009, Issuer B acquired Company A from JT, and in connection therewith, Issuer B entered into an agreement to purchase all of Company A's issued and outstanding capital stock in exchange for a combination of cash and a \$3,750,000 note. The terms of the note required Issuer B to repay JT the principal amount of \$3,750,000 plus interest of 3.5% per annum for the life of the loan. Also pursuant to the

agreement, JT entered into an employment agreement with Company A to serve as its president and a member of its board of directors. Thus, as of May 15, 2009, JT, as President of a wholly owned subsidiary of Issuer B, fell within the definition of “issuer,” as set forth in Section 2(a)(11) of the Securities Act of 1933.

- b. Second, on March 8, 2010, JT and Issuer B amended the terms of the promissory note to increase the principal amount to \$4,000,000.
- c. Third, on July 9, 2010, JT and Issuer B entered into a conversion agreement whereby \$50,000 of the \$4,000,000 due pursuant to the terms of the promissory note was converted into 100,000,000 shares of Issuer B’s common stock and paid to JT.

82. On August 4, 2010, Customer J deposited 56,500,000 of its 100,000,000 shares of Issuer B’s stock into its [REDACTED] brokerage account. Because Customer J received the shares through a private transaction with the issuer, the securities were restricted. Nevertheless, starting on October 1, 2010, and continuing through October 8, 2010, Customer J liquidated all 56,500,000 Issuer B shares.

83. On June 7, 2011, the SEC suspended trading in Issuer B’s stock because of “questions about the adequacy and accuracy of publicly available information about the company[y], which trade[d] in the over-the-counter (OTC) market.”

84. At no time from October 1, 2010 until October 8, 2010, was a valid registration statement in effect concerning the 56,500,000 Issuer B shares sold by Customer J. Also during this time, no exemption from registration applied to any of the sales. Thus, each Customer J sale of Issuer B shares that occurred between October 1, 2010 and October 8, 2010, constituted a sale of an unregistered security in violation of Section 5 of the Securities Act of 1933.

85. Based upon the foregoing, [REDACTED] and DuBrule violated FINRA Rule 2010 by causing the Firm to sell unregistered securities in contravention of Section 5 of the Securities Act of 1933.

FIFTH CAUSE OF ACTION

MISLEADING COMMUNICATIONS WITH THE PUBLIC VIOLATIONS OF NASD RULES 2210 AND 2110, AND FINRA RULE 2010 (STEPHEN PIZZUTI)

86. The Department realleges and incorporates by reference paragraphs 1-85 above.

87. NASD Rule 2210(d)(1)(A) requires that all member communications with the public be fair and balanced, provide a sound basis for evaluating the facts the securities or products being discussed, and not omit material information which would cause the communications to be misleading.

88. NASD Rule 2210(d)(1)(B) prohibits false, exaggerated, unwarranted or misleading statements or claims in any communication with the public.

89. NASD Rule 2210(a) defines communications with the public to include advertisements, sales literature, correspondence, institutional sales material, public appearances, and independently prepared reprints. NASD Rule 2210(a)(1) provides that websites are advertisements.

90. NASD Rule 2210(d)(2)(B) requires any advertisement that contains a comparison between investments or services to disclose all material differences between them, including (as applicable) investment objectives, costs and expenses, liquidity, safety, guarantees or insurance, fluctuation of principal or return, and tax features.

91. NASD Rule 2210(d)(2)(C)(i) requires that advertisements “must prominently disclose the name of the member.”

92. NASD IM-2210-1 provides guidelines to ensure that communications with the public are not misleading.

93. NASD Rule 2210(b)(1)(A) requires a registered principal of a member to approve by signature or initial and date each advertisement, item of sales literature and independently prepared reprint before the earlier of its use or filing with FINRA’s Advertising Regulation Department.

94. From September 2010 to February 2012, Pizzuti disseminated securities-related communications to the public that contained material omissions and/or materially misleading information. Pizzuti made these communications through two websites that he controlled: www.evaluvest.com and www.evaluvestp4.com (the “Evaluvest Websites”). The Evaluvest Websites were publicly accessible and while each contained some subscriber-only content, all communications referenced herein were freely accessible by the general public.

95. Through the Evaluvest websites, Pizzuti marketed a subscription-based “stock analyzer” that used “computational algorithms” to identify stocks with the “highest Alpha and strongest performance.” However, Pizzuti failed to provide a sound basis for potential investors to evaluate his product, and failed to present a balanced statement of its benefits and risks.

96. Pizzuti made the following violative statements through the Evaluvest websites:

- *It's a fact – the institutional (professional) investors have the advantage when trading on Wall Street. ... They absolutely need the individual investors – who else will buy stocks that they need to sell? The unprepared and inexperienced investor is gambling on Wall Street. The Evaluvest system has been designed to give the individual investor access to the same tools and data as the professional investor.*
- *The Evaluvest P4 system will greatly reduce your probability for failure by narrowing down a universe of 6900 stocks to a few portfolios of 25 stocks or less. The stocks in these “Power” portfolios possess the best quantitative and technical ranks in the market and the greatest Alpha Power.*
- *When the market is in an “Oversold” condition, the market is LOWER and good stocks tend to be “on sale.” This is when we are most excited about taking profitable long positions and you should be too.*
- *Up to the minute intraday alerts of stocks within the Evaluvest P4 system that are outperforming the market or are gaining Alpha Power in preparation for a big move. [sic].*
- *Power breakouts are stocks that are breaking out (price is increasing) from an intraday Evaluband trigger.*
- *Consolidated breakouts are stocks that are breaking out (price is increasing) from our proprietary algorithms and chart patterns within a consolidation.*
- *Imagine instant access to the P4-Factor Analysis screening on 6900 stocks instantly at your fingertips with real-time intraday alerts to take action. Now- stop imagining and start doing. Own the “Hot” stocks before they hit CNBC or other financial news media. Take the Evaluvest challenge and we will show you how.*
- *Sign up now! Take the P4 challenge. You have everything to gain!*

97. Pizzuti's statements were exaggerated and misleading because they falsely implied that investors who did not purchase the Evaluvest system were taken advantage of by professional investors, and that investors who did purchase the Evaluvest system would have the same access to the market as professional investors. Pizzuti also implied that investors who purchased his product would have access to non-public information.

98. Pizzuti failed to define terminology about the product he was selling, including “Alpha,” “Alpha Power,” “Evaluband trigger,” “proprietary algorithms and chart patterns,” and “P4-Factor Analysis.” Thus, members of the public could not easily determine what product Pizzuti was selling or what services the Evaluvest system provided.

99. Pizzuti claimed that his stock portfolios possessed the “best quantitative and technical ranks in the market,” however, the website contained no information that would allow an investor to evaluate whether this statement was accurate.

100. The Evaluvest Websites failed to provide an explanation of any risks associated with purchasing and using the Evaluvest system or any of the portfolios within the system.

101. The Evaluvest homepage contained four tabs labeled, “Home,” “Analyze,” “Invest,” and “Protect.” The Home and Analyze tabs described the Evaluvest system, and prominently displayed the name and photograph of Stephen Pizzuti. However, these tabs failed to identify [REDACTED] as the member firm associated with Pizzuti and Evaluvest. In addition, while the Invest tab contained information on [REDACTED] and provided forms to open a brokerage account at [REDACTED] this tab failed to identify Pizzuti as [REDACTED] founder and a current principal of the Firm. Thus, the websites failed to prominently display [REDACTED] name, and failed to disclose the relationship between [REDACTED] and Pizzuti.

102. The Evaluvest Websites contained only a general disclaimer, which failed to address any specific risks presented by the products sold through the website.

103. Based upon the foregoing, Pizzuti violated NASD Rule 2210 and FINRA Rule 2010.

SIXTH CAUSE OF ACTION

FAILURE TO ESTABLISH AND IMPLEMENT AN EFFECTIVE ANTI-MONEY LAUNDERING SYSTEM VIOLATIONS OF NASD RULE 3011(A), AND FINRA RULES 3310 AND 2010 (██████████, ██████████, AND ██████████)

104. The Department realleges and incorporates by reference paragraphs 1-103 above.

105. NASD Rule 3011(a) provided that Firms must establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious activity or transactions, as required by 31 U.S.C. 5318(g) and the implementing regulations thereunder. NASD Rule 3011(a) was renumbered FINRA Rule 3310(a) on January 1, 2010.

106. Starting in about May 2009, ██████████ began servicing customers whose primary trading activity involved penny stocks. At the time, ██████████ had in effect a written Compliance Manual and Written Supervisory Procedures (“██████████ WSPs”), and the Firm’s AML policies, procedures, and internal controls were described in the Firm’s written AML Program Compliance and Supervisory Procedures, dated October 12, 2007 (“2007 AML Procedures”), which were revised on January 1, 2010 (“2010 AML Procedures”).

107. Prior to September 2010, the ██████████ WSPs contained no references to penny stock trading activity.

108. The 2007 AML Procedures described numerous examples of suspicious activity; however none of the examples were specifically directed at identifying suspicious activity that could arise in the course of depositing, trading, and selling penny stocks. Thus, from May 2009 through January 2010, the Firm had no written policies, procedures, or internal

controls related to penny stock activity, despite that penny stock trading constituted between ten and twenty percent of the Firm's business.

109. The 2010 AML Procedures contained a section that identified red flags that ████████ registered representatives should identify that signaled potential money laundering activity. Examples of suspicious activity concerning "certain securities transactions" included:

- a. Two or more accounts trade in illiquid stock suddenly and simultaneously
- b. Customer has opened multiple accounts with the same beneficial owners or controlling parties for no apparent business reason
- c. Customer transactions include a pattern of receiving stock in physical form or the incoming transfer of shares, selling the position and wiring out proceeds

110. Examples of red flags concerning penny stock companies in the 2010 AML Procedures included:

- a. Company has no business, no revenues and no product
- b. Company has experienced frequent or continuous changes in its business structure
- c. Officers or insiders of the issuer are associated with multiple penny stock issuers
- d. Company undergoes frequent material changes in business strategy or its line of business

- e. Officers or insiders of the issuer have a history of securities violations
- f. Company has not made disclosures in SEC or other regulatory filings
- g. Company has been the subject of a prior trading suspension

111. As previously noted, in September 2010 the Firm implemented for the first time written policies and procedures for processing Over-the-Counter and Pink Sheet Securities (penny stocks). The procedures required that registered representatives processing penny stock transactions complete a set of Deposit Securities Request forms, including a customer questionnaire, that intended to document the source of the penny stock and confirm that the stock was registered with the SEC or exempt from registration, among other things. According to the written procedures, the Deposit Securities Request forms were prepared by the registered representative, and reviewed and approved by a designated Deposit Securities Request processor reviewer and compliance personnel. The procedures stated that the “[Deposit Securities Request] forms must be signed by compliance or corporate management before being forwarded to the clearing firm.” The procedures also directed that registered representatives that uncovered any suspicious activity must notify the Firm’s compliance personnel.

112. In addition, a [REDACTED] staff member was required to research each new customer’s background including any securities-related disciplinary history.

113. From April 2008 through the date of this Complaint, [REDACTED] was [REDACTED] Chief Compliance Officer and was responsible for reviewing all Firm trading activity, including any trading in penny stocks. The 2007 AML Procedures and the 2010 AML Procedures

identified [REDACTED] as the Firm's AML Compliance Officer, and the [REDACTED] WSPs describe [REDACTED] as the principal responsible for ensuring AML Supervision.

114. As a FINRA member, [REDACTED] was required to implement a risk-based AML program tailored to its lines of business. However, from May 2009 through January 2013, [REDACTED], [REDACTED], and [REDACTED] failed to implement anti-money laundering procedures concerning penny stock trading that were designed to achieve compliance with the Bank Secrecy Act. The Firm, [REDACTED] and [REDACTED] failed to adequately review customer transactions involving penny stocks, and in many instances, penny stock transactions were processed without any supervisory review.

115. The 2010 AML Procedures failed to instruct Firm employees how to report red flags and suspicious activity. In particular, the subsection titled "Responding to Red Flags and Suspicious Activity" stated in relevant part that "[w]hen an employee of the Firm detects any red flag or other activity that may be suspicious, he or she will notify [*include procedures for escalation of suspicious activity*]."[italics in original] Consequently, [REDACTED] staff had no written guidance that instructed them in the event that the staff encountered suspicious activity.

116. From May 2009 through January 2013, [REDACTED] as Chief Compliance Officer, and [REDACTED], as AML Compliance Officer, were responsible for all facets of AML supervision. However, [REDACTED] and [REDACTED] failed to identify specific instances of suspicious activity in the accounts of Firm customers that exclusively traded in penny stocks, including failing to identify customers with securities-related history, failing to identify suspicious trading activity, and failing to identify red flags directly related to penny stock trading.

████████ Customers with a History of Discipline in the Securities Industry

117. From on or about May 1, 2009 to on or about January 5, 2010, Customer T opened three brokerage accounts at ████████. Customer T opened the first account in the name of an entity called Customer Q, and opened the remaining two accounts in his own name.

Customer T has an extensive history of securities-related disciplinary actions:

- a. On June 4, 2009 Customer T signed an AWC with FINRA that resulted in Customer T being permanently barred from association with any FINRA member firm in any capacity. Customer T consented to the entry of findings that through his actions, his member firm failed to adequately enforce anti-money laundering procedures, failed to file suspicious activity reports, failed to investigate suspicious activity in customer accounts, and failed to maintain and enforce supervisory systems and procedures concerning, among other things, “front running.”
- b. On January 2, 2008, the State of Maryland Division of Securities issued an Order to Show Cause concerning Customer T’s activity at a securities firm he was operating. On February 5, 2008, Customer T consented to the entry of a bar from association with any broker-dealer in the state of Maryland. In connection with this settlement, Customer T was found to have aided and abetted securities fraud in violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

- c. On June 12, 2007, Customer T signed an AWC with NASD which resulted in Customer T being censured and fined \$12,500. GC consented to the entry of findings that through his actions, his member firm conducted a securities business without sufficient net capital.
- d. On April 11, 2007, the United States Securities and Exchange Commission instituted proceedings against Customer T for aiding and abetting a pump-and-dump scheme. Customer T allegedly executed more than 200 trades which generated \$2.5 million in proceeds. On December 5, 2007, Customer T consented to a cease-and-desist order that compelled him to cease violating Section 10(b) of the Exchange Act and Rule 10b-5, and was barred from the securities industry for two years and fined \$25,000.

118. On or about July 8, 2009 an entity called Customer D opened a brokerage account at [REDACTED]. DuBrule was the designated registered representative for Customer D's account. Documents prepared at the time the Customer D account was opened list an individual named Customer U as Customer D's Managing Member and the primary signatory for the account. On September 9, 1998, the NASD filed a complaint against Customer U alleging numerous violations of the securities laws including fraud and executing unauthorized transactions in customer accounts. On February 28, 2001, Customer U was permanently barred from association with any FINRA member firm in any capacity.

119. On or about June 21, 2010, customer Customer V opened a brokerage account at [REDACTED]. On January 30, 1995, the NASD filed a Complaint against Customer V alleging numerous violations of the securities laws including recommending unsuitable investments to a customer and misappropriating over \$20,000 in customer funds. On August 2, 1995, Customer V was censured, fined \$100,000, and permanently barred from association with any FINRA member firm in any capacity.

120. [REDACTED], [REDACTED] and [REDACTED] failed to adequately research the securities-related disciplinary history of these customers, or were aware of their disciplinary history and did nothing to elevate or tailor the level of supervision of their customers' trading activity in light of this red flag.

Suspicious Activity Involving Penny Stock Issuers

Activity Involving Issuer F

121. Issuer F was incorporated as CLPI on August 31, 1988. In May 1997, the company changed its name to CGI. In October 2006 the company changed its name to MSI. In August 2008, the company changed its name again to CTC. In May 2010 the company changed its name to Issuer F.

122. From August 27, 2010 through December 27, 2010, Issuer F was quoted on the Pink Sheet and OTCQB markets.

123. From October 19, 2010, through December 26, 2010, Issuer F disseminated numerous press releases that made claims regarding Issuer F expanding its intellectual property and various pending patent applications associated with solutions for containing oil spills.

124. The press releases disseminated by Issuer F coincided with increased market activity in Issuer F's common stock. During the three month period from July 16, 2010 through October 18, 2010, Issuer F's average daily trade volume was 633 shares. During the period from October 19, 2010 through December 26, 2010, Issuer F's average daily trade volume was 42,396 shares, and its share price fluctuated from an intraday low of \$0.05 to an intraday high of \$0.59.

125. During the period from August 27, 2010 through December 27, 2010, three [REDACTED] customers liquidated approximately 468,500 Issuer F shares for proceeds totaling \$117,093.

126. Customer D received 130,000 unregistered Issuer F shares in its [REDACTED] brokerage account on October 22, 2010. From October 26, 2010 through November 4, 2010, Customer D sold 68,650 shares of Issuer F's stock for proceeds totaling \$22,005. On November 8, 2010, Customer D wired \$13,043 from its [REDACTED] account to an outside bank account. From November 16, 2010 through November 18, 2010, Customer D sold 26,053 shares of Issuer F's stock for proceeds totaling \$4,237. On November 23, 2010, Customer D wired \$3,393 from its [REDACTED] account to an outside bank account. From December 6, 2010 through December 13, 2010, Customer D sold 14,637 shares of Issuer F's stock for proceeds totaling \$1,235. On December 17, 2010, Customer D wired \$2,254 from its [REDACTED] account to an outside bank account. On December 20, 2010 and December 21, 2010, Customer D sold 46,160 shares of Issuer F's stock for proceeds totaling \$5,608. In two transactions on December 23, 2010 and December 27, 2010, Customer D wired \$5,608 from its [REDACTED] account to an outside bank account.

127. Customer R deposited 300,000 unregistered Issuer F shares into his [REDACTED] brokerage account on August 9, 2010. From August 27, 2010 through December 27, 2010,

Customer R sold 272,000 shares of Issuer F's stock for proceeds totaling \$70,506. From September 15, 2010 through December 30, 2010, Customer R wired \$61,206 in ten separate wire transfers from his [REDACTED] account to an outside bank account.

128. From October 1, 2010 through November 5, 2010, Customer S sold 41,000 Issuer F shares from his [REDACTED] brokerage account for proceeds totaling \$13,502.

129. [REDACTED], [REDACTED], and [REDACTED] failed to identify irregular trading activity present during the time immediately after the issuance of Issuer F press releases, and failed to identify Issuer F trading activity that should have reasonably been observed as a red flag according to the Firm's AML Procedures.

Activity Involving Issuer G

130. Issuer G was an OTC Link quoted issuer headquartered at a residential address in Salt Lake City, Utah.

131. On or about March 28, 2011, Issuer G disseminated a press release that stated, among other things, that Issuer G "has begun preliminary discussions regarding its patent-pending 'World Home' prefab permanent housing available for Japan disaster victims." Concurrent with the press release, Issuer G conducted an internet-based stock promotion campaign that involved disseminating emails to potential investors.

132. The Issuer G press release and stock promotion activity coincided with increased market activity in Issuer G's common stock. During the four year period from February 12, 2007 through March 25, 2011, Issuer G's average daily trade volume was slightly below 60,000 shares. However, during the period from March 28, 2011 through April 28, 2011,

Issuer G's average daily trade volume was 4,096,177 shares, and its share price fluctuated from an intraday low of \$0.0097 to an intraday high of \$0.025.

133. On March 28, 2011, [REDACTED] Customer V sold 50,000 unregistered Issuer G shares from his [REDACTED] brokerage account for proceeds totaling \$1,000.

134. [REDACTED], [REDACTED], and [REDACTED] failed to identify irregular trading activity present during the time immediately after the issuance of the Issuer G press release.

Activity Concerning Issuer H

135. Issuer H was a Pennsylvania-based healthcare membership organization quoted on the Pink Sheets.

136. From April 15, 2009 through June 24, 2009, Issuer H disseminated press releases announcing the company's increased revenue and business expansions through new healthcare membership programs.

137. From April 17, 2009 through June 11, 2010, [REDACTED] Customer T deposited and sold millions of unregistered Issuer H shares from three separate [REDACTED] accounts under his control.

138. On May 1, 2009, Customer T opened a [REDACTED] brokerage account bearing account number xxxx1869. On December 16, 2009, GC deposited 250,000 unregistered Issuer H shares that he received directly from Issuer H into [REDACTED] account ending 1869. On December 31, 2009, Customer T deposited an additional 250,000 unregistered Issuer H shares that he received directly from Issuer H into [REDACTED] account ending 1869. The forms prepared by [REDACTED] staff at the time of the December 2009 deposits reflected that the deposited Issuer H shares were neither registered with the SEC, nor exempt from registration when Customer T

acquired them. Nevertheless, from November 17, 2009 through April 7, 2010, Customer T sold 1,000,000 unregistered Issuer H shares from account ending 1869, for proceeds totaling \$48,694. From November 27, 2009 through August 8, 2010, Customer T wired \$63,610 in 24 separate wire transfers from [REDACTED] account ending 1869 to an outside bank account.

139. On December 29, 2009, Customer T opened a [REDACTED] brokerage account bearing account number xxxx0565. On April 27, 2010, Customer T deposited 400,000 unregistered Issuer H shares that he received directly from Issuer H into [REDACTED] account ending 0565. The form prepared by [REDACTED] staff at the time of the deposit reflected that the deposited Issuer H shares were neither registered with the SEC, nor exempt from SEC registration when Customer T acquired them. Nevertheless, from May 25, 2010 through June 11, 2010, Customer T sold all 400,000 unregistered Issuer H shares from [REDACTED] account ending 0565, for proceeds totaling \$13,802.

140. On January 5, 2010, Customer T opened a [REDACTED] brokerage account bearing account number xxxx2322. On January 11, 2010, Customer T deposited 150,000 unregistered Issuer H shares that he acquired directly from Issuer H into [REDACTED] account ending 2322. The form prepared by [REDACTED] staff at the time of the deposit reflected that the deposited Issuer H shares were neither registered with the SEC, nor exempt from SEC registration when Customer T acquired them. Nevertheless, from January 21, 2010 through February 11, 2010, Customer T sold 68,650 unregistered Issuer H shares from [REDACTED] account ending 2322, for proceeds totaling \$9,029. From January 25, 2010 through September 15, 2010, Customer T wired \$13,962 in six separate wire transfers from [REDACTED] account ending 2322 to an outside bank account.

141. Despite the fact that Customer T had an extensive securities-related disciplinary history, had opened multiple accounts titled in his name and the name of nominee entities that he

controlled, and had deposited, sold and wired out proceeds from penny stock activity in a short time period, [REDACTED] and [REDACTED] failed to observe that this activity raised red flags and was potentially suspicious, such that they should have investigated the activity in order to determine whether it was necessary to file a Suspicious Activity Report.

142. In addition, [REDACTED] and [REDACTED] failed to review dozens of forged Deposit Securities Request forms and thus allowed to be processed dozens of penny stock transactions absent any supervisory review. In some instances, unsupervised penny stock deposits were made into [REDACTED] accounts controlled by customers with securities-related disciplinary history.

143. The Firm's lack of risk-based monitoring prevented the Firm from observing patterns of suspicious activity and resulted in certain [REDACTED] customers selling millions of shares of unregistered non-exempt securities to the public.

144. Based upon the foregoing, [REDACTED], [REDACTED], and [REDACTED] violated NASD Rule 3011 and FINRA Rule 2010, for conduct occurring before January 1, 2010, and violated FINRA Rules 3310 and 2010 for conduct occurring after December 31, 2009.

SEVENTH CAUSE OF ACTION

FAILURE TO MAINTAIN AN EFFECTIVE SUPERVISORY SYSTEM AND WRITTEN SUPERVISORY PROCEDURES VIOLATION OF NASD RULES 3010 AND 2110, AND FINRA RULE 2010 [REDACTED] PIZZUTI, [REDACTED], [REDACTED], AND DUBRULE)

145. The Department realleges and incorporates by reference paragraphs 1-144 above.

146. NASD Rule 3010(a) requires FINRA registered firms to establish and maintain a system to supervise the activities of its employees that is reasonably designed to achieve compliance with the federal securities laws and NASD and FINRA Rules.

**██████████ and ██████████ Failed to Supervise
Tuttle's and DuBrule's Private Securities Transactions**

147. NASD Rule 3040(c)(2) requires member firms that approve an associated person's participation in private securities transaction to record that person's transactions on the books and records of the member, and requires the member to supervise the person's participation in the transaction as if the transaction were executed on behalf of the member.

148. ██████████ WSPs prohibited its registered representatives from engaging in private securities transactions without the Firm's prior written approval.

149. In or about September 2007, ██████████ met with Tuttle and DuBrule and discussed their activity surrounding TAM, the Dellinger Fund, and the TAM Fund. By letter dated September 14, 2007, Tuttle and DuBrule formally requested that ██████████ permit them to conduct private securities transactions in connection with TAM, the Dellinger Fund, and the TAM Fund.

150. By letter dated November 15, 2007, ██████████, acting through ██████████, granted Tuttle permission to engage in his outside business activities, and to transact securities business in accordance with NASD Rule 3040. ██████████ prohibited Tuttle from marketing participation from any ██████████ client in any outside hedge funds, including the Dellinger Fund and TAM Fund.

151. By letter dated September 9, 2008, DuBrule requested that ██████ permit him to perform outside business activities in connection with TAM, the Dellinger Fund, and other companies. ██████, through ██████ granted DuBrule permission to engage in these outside businesses, so long as DuBrule advised the Firm of any changes in his activities.

152. From November 2007 through January 2010, after permitting Tuttle and DuBrule to engage in activities related to the Dellinger Fund and the TAM Fund, ██████, acting on behalf of ██████, was responsible for reviewing Tuttle and DuBrule's outside business activity concerning the Dellinger and TAM Funds, including monitoring any private securities transactions in connection with the funds. However, the Firm and ██████ failed to take reasonable steps to review Tuttle's and DuBrule's activities, and failed to record on the Firm's books and records securities transactions that Tuttle and DuBrule facilitated through the Dellinger and TAM Funds.

153. From on or about November 15, 2007 through 2010, ██████ reviewed brokerage account statements for the Dellinger Fund and the TAM Fund. However, ██████ review was limited to ensuring that the trading in the Funds was not being used to "front-run" the trading of ██████ clients.

154. ██████ and ██████ were aware of the illiquid nature of the investments in which the Dellinger and TAM Funds were investing, but failed to request or review any of the promissory notes, or consolidated agreements that the Funds had entered into. A review of these notes and agreements would have revealed that DuBrule and Tuttle were assigning values in the millions of dollars on defaulted promissory notes that had been serially cancelled or covered by a subsequent note or agreement.

155. [REDACTED] and [REDACTED] failed to request and review Quarterly Statements or Summary Quarterly Statements that were provided to investors in the Dellinger Fund and the TAM Fund. These statements showed that management fees and performance allocations assessed by DuBrule and Tuttle, were based the on defaulted promissory notes that DuBrule and Tuttle had assigned values in the millions of dollars.

156. [REDACTED] and [REDACTED] failed to review general ledgers and Quarterly Statements for the Dellinger and TAM Funds that would have shown deposits and withdrawals from the funds. Thus, while the Firm expressly prohibited Tuttle and DuBrule from seeking new investors for the Dellinger and TAM Funds, the Firm and [REDACTED] failed to observe that in 2009 the Dellinger Fund accepted over \$4 million in new investments from new or preexisting investors.

157. Among the investors that contributed new money into the Dellinger Fund in 2009 were two preexisting investors. If [REDACTED] reviewed the promissory notes and Summary Statements he would have known that those customers had received statements that valued their investment in the millions of dollars, but that the statements failed to make the investors aware that the assets underlying their investment were in default.

**[REDACTED], [REDACTED], [REDACTED], and DuBrule
Failed to Supervise Penny Stock Trading Activity**

158. The WSPs further required that a principal periodically review trading in its customer accounts for, among other things, suitability of recommended transactions and to identify excessive trading. However, [REDACTED], [REDACTED] and [REDACTED] failed to review Firm customers' penny stock trading activity and related Deposit Securities Request forms, and consequently caused the Firm to process approximately 33 unsupervised penny stock

transactions, including a single deposit transaction that resulted in the sale of millions of shares of unregistered securities.

159. Despite knowing as early as September 2010 that a member of [REDACTED] staff had forged a significant but unknown number of Deposit Securities Request forms and thus caused numerous unregistered penny stocks to be deposited into [REDACTED] customer accounts absent supervisory review, [REDACTED], Pizzuti, [REDACTED], [REDACTED], and DuBrule failed to conduct any investigation to determine the scope of the forgeries and unsupervised penny stock trading. The Firm also made no effort to determine whether any unsupervised transactions resulted in a violation of Section 5 of the Securities Act of 1933, or required follow-up or reporting under the Firm's AML procedures.

**[REDACTED] [REDACTED], and [REDACTED] Failed to
Supervise Pizzuti's Communications with the Public**

160. The [REDACTED] WSPs provided that all advertising must be reviewed by the Director of Compliance prior to use and submitted to the FINRA Advertising Regulation Division within ten (10) days of its proposed use. [REDACTED] was the principal designated responsible for reviewing all advertising materials. The Written Supervisory Procedures failed specifically to address registered representatives' communications with the public through websites.

161. As Chief Compliance Officer, [REDACTED] was aware of the Evaluvest Websites and contended that he periodically reviewed the content of the website. However, [REDACTED] failed to make any record of his review and approval of the content of the websites.

162. As described above, Pizzuti disseminated securities-related communications that provided insufficient information to evaluate the products offered; failed to define relevant

terminology; made misleading statements about the market and products impact on investors; failed to adequately disclose risks; failed to prominently disclose the name of the registered broker-dealer; failed to disclose the relationship between Pizzuti and [REDACTED]; and generally presented to the public information that was misleading, exaggerated, and unwarranted.

[REDACTED] Failed to Supervise Foreign Finders

163. From November 2010 through September 2011, [REDACTED] failed to establish, maintain, and enforce an adequate supervisory system related to the supervision of foreign finders.

164. On or about November 19, 2010, [REDACTED] entered into a Foreign Finder Referral Agreement with NMC. NMC was located in Mexico, and entered securities transactions via the internet on behalf of clients that it referred to [REDACTED]. NMC was the primary point-of-contact for clients that it referred to [REDACTED] who needed account-related support.

165. When [REDACTED] entered into the Foreign Finder Referral Agreement with NMC, the [REDACTED] WSPs did not contain any provision to address supervision of foreign finders.

166. [REDACTED] began paying transaction-based compensation to NMC in or about March 2011. Prior to June 2011, [REDACTED] transaction confirmations for its NMC-referred customers failed to indicate that compensation was being paid to a foreign-based entity.

167. In approximately May 2011, [REDACTED] created a document entitled [REDACTED] Policies & Procedures for Payment of Foreign Finders Fees Effective May 2011. The one-page document listed conditions that must be met for the foreign finder exemption to apply when a

firm pays transaction-related compensation to non-registered foreign persons. However, the document failed to establish procedures to supervise the activities of related foreign finders, and failed to identify the principal responsible for ensuring compliance with these newly enacted policies and procedures.

168. By virtue of the foregoing, Pizzuti, [REDACTED], [REDACTED], and DuBrule failed to reasonably supervise activity at [REDACTED] in violation of NASD Rule 3010, NASD Rule 2110 for conduct occurring before December 15, 2008, and FINRA Rule 2010 for conduct occurring after December 14, 2008.

EIGHTH CAUSE OF ACTION

EFFECTING SECURITIES TRANSACTIONS WHILE REGISTRATION SUSPENDED VIOLATIONS OF FINRA BY-LAWS ARTICLE IV, SECTION 1, AND FINRA RULE 2010 ([REDACTED])

169. The Department realleges and incorporates by reference paragraphs 1-168 above.

170. Article IV, Section 1, of the FINRA By-Laws requires, among other things, that all FINRA members pay dues, assessments and other charges as required by the corporation's By-Laws.

171. On or about April 6, 2009, [REDACTED] was sent an invoice for its Annual Assessment fee by first class mail to 1175 Spring Centre South Blvd., Suite 150, Altamonte Springs, Florida 32714, which is the address of record in the Central Registration Depository (" [REDACTED] CRD Address"). The first class mailing was not returned to FINRA.

172. Having failed to receive payment, on or about May 15, 2009, [REDACTED] was sent a letter marked "Reminder Notice," to [REDACTED] CRD Address by first class mail. The first class mailing was not returned to FINRA.

173. Having still failed to receive payment, on or about June 22, 2009, [REDACTED] was sent a letter marked "SECOND REQUEST," to [REDACTED] CRD Address by first class mail. The first class mailing was not returned to FINRA.

174. Having again failed to receive payment, on or about July 27, 2009, [REDACTED] was sent a letter marked "FINAL REQUEST," to [REDACTED] CRD Address by first class mail. The first class mailing was not returned to FINRA.

175. On or about August 12, 2009, [REDACTED] was sent a letter marked "NOTICE OF INTENT TO SUSPEND MEMBERSHIP FOR FAILURE TO PAY DUES, FEES AND OTHER CHARGES TO FINRA" to [REDACTED] CRD Address by overnight delivery. The letter was delivered on August 13, 2009. The Notice stated that the suspension would be effective on September 2, 2009.

176. From on or about September 2, 2009 to on or about September 17, 2009, [REDACTED] registration with FINRA was suspended for the failure to pay its annual registration fee. During this time when the registration was suspended, [REDACTED] effected a total of 754 securities transactions.

177. By virtue of the foregoing, [REDACTED] effected securities transactions while its registration with FINRA was suspended, in violation of FINRA By-Laws Article IV, Section 1, and FINRA Rule 2010.

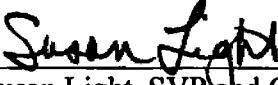
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondents committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that Respondents DuBrule and Tuttle be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;
- C. order that Respondents bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330;
- D. make specific findings that Respondents DuBrule and Tuttle willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;
- E. make specific findings that Respondents [REDACTED] and [REDACTED] failed to supervise associated persons whose conduct violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; and
- F. grant all further relief, legal or equitable, that is warranted under the circumstances.

FINRA DEPARTMENT OF ENFORCEMENT

Date: July 3, 2013


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